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No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Respondent

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE AMICUS CURIAE IN SUPPORT Of PETITIONER AND THIS COURT GRANTING HER PETITION

Now comes RONALD Z. BERKI, ESQ., and moves for leave to file the attached brief as Amicus Curiae in support of Petitioner and this Court hearing her Petition.

This motion is being filed as the opposing party, Supreme Judicial

Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus wishes to bring to the Court's attention relevant matter which has not already been brought to its attention and which has not been raised by the parties. That relevant information concerns the need for a declaration of unconstitutionality of the State Bar Court of the California State Bar Asociation due to its failure to have any ingredients of a Court and the lack of due process inherent in a system where the judges and the prosecutors are co-employees paid by the same private funds and employed by the same 23

private citizens.

Amicus wishes to have this Court consider the need to void the alleged State Bar Court of the State Bar of California under the reasoning of McClure v. Harris, 503 F. Supp. 409, 450, May 19, 1980 (Northern District Court of California) as described herein.

It is important for California attorneys to know who licenses them and how and what is not proper rather than being in a state of fear, uncertainty, and conflicting demands from different branches of government and different persons. Our compelled cash being used for legislative encroachment and abrogation of our duties within the judicial branch is without our authorization and consent. We did not

vote to abridge our California and United States Constitutions by asserting our own trade group could have a Court nor did we, the compelled members, vote to allow the 23 private persons on our board to claim to create a Court and abort our Constitutional form of government.

For the foregoing, Amicus respectfully requests the attached brief be considered in aid of this Court's determination to hear the Petition and void the judgment and aid us in our serious Constitutional crisis.

RESPECTFULLY SUBMITTED,

Ronald Z. Berki

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Amicus Curiae Applicant

QUESTION PRESENTED

1. Does the Due Process of law clause prohibit a state creating a court that is not empowered to decide any law and has no ingredients of a Court ?

2. Does the equal protection of the law clause invalidate an alleged State Bar Court licensing California attorneys when it is not a court ?

3. Does Due Process of law permit a state to have attorneys licensed by private judges and prosecutors who are co-employees of the same private membership trade group ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

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TABLE OF AUTHORITIES

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AMICUS CURIAE BRIEF IN
SUPPORT OF PETITIONER

The Interest of Amicus

Applicant Attorney respectfully requests permission to file the enclosed Amicus Curiae brief in support of Petitioner. His interest in this court granting this Petition is so as to resolve present concerns of himself and

other California lawyers concerning who licenses them presently. Their contracts of licensing were with the California Supreme Court. Attorneys have always been licensed since they were first created in 1292 in England in their state's highest court. This ensured uniformity, codes of ethics established only by their admitting court, judicial competence, rules of evidence and procedure applied, and due process rights for attorneys. It served to not politicize attorneys so they could faithfully discharge their duties to their clients and the Public.

Now a defective system has been created which is constitutionally infirm where Applicant faces being

licensed by his own opponent and competitor. When the judges and the referees of the alleged State Bar Court and the state bar prosecutors are co-employees of a private membership trade group and interested in their mutual principal's private welfare and ability to pay their salaries with private funds and fines they themselves impose, the scales of justice appear tipped against fair and impartial and competent treatment of California attorneys. Private concerns predominate and not public duty.

Summary of Argument

Amicus believes the decisions of Gibson v.Berryhill, 411 U.S. 564 (1973) and McClure vs. Harris, 503 F. Sup. 409, 450, May 19, 1980

(Northern District Court of California) are dispositive of the unconstitutionality of the statutes creating a State Bar Court and the unconstitutionality of the Involuntary Inactive Enrollment statute.

Argument in Support of the Petition

I.

INTRODUCTION

As a practical matter, the state bar court is unconstitutional as it has no ingredients of a court.

Black's Law Dictionary defines " Court," as " an organ of government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice... an incorporeal political body being

composed of one or more judges."

The state bar association is not an organ of government. It is a private membership group of private attorneys. Ca. Business and Professions Code section 6001. It is an administrative arm to the state supreme court and not an independent, co-equal judicial entity. Article 6, section 1, Ca. Constitution; Chronicle Publishing Co. v. Superior Court in and for the City of San Francisco (1960) 7 Cal. Rptr. 109, 354 P. 2d. 637, 54 C. 2d. 548; Brotsky v. state bar, (1962), 157 Cal. 2d. 287, 300-301, Byronjack v. state bar (1929) 208 Cal.2d 287, Hinds v. state bar (1941) 119 P. 2d. 134, 19 C.87; Gipson v. Supreme Court of New

Jersey, C.C.N.J., 416 F. Supp. 1129, affirmed C.A., Gipson v. New Jersey Supreme Court, 558 F.2d.701.

As held in In re: Gibson, 35 N.M. 550, if a statute purports to allow a state bar association to create an inferior tribunal, it is unconstitutional.

The state bar's role is solely to take evidence for the state supreme court. Ca. Business and Professions Code sections 6077 and 6078. Its only records are minutes, hearing transcripts and advisory recommendations for the Supreme Court, Ca. Business and Professions Code section 6080.

Whereas " courts " must have records, the alleged state bar court has none.

The California Constitution lists the only courts of record allowed. Art.6, sec.1. The State Bar Court is void as it can have no records.

Since a " Court's " function is the application of the laws to controversies brought before it and the public administration of justice..," Blacks's Law Dictionary, supra, but the state bar court is prohibited constitutionally from applying any law to any facts or finding any facts or law, it can not be a court. Article 6, section 1 and 9, article 3, section 3 and 3.5, Ca. Constitution.

Since the definition of a court requires that it " be an incorporeal political body being composed of one or more judges," Black's Law

Dictionary, supra, but the state bar court has no judges and may never have any judges as judges may only sit in courts created by the people and all judges of the courts must be elected by the People, it does not have the basic ingredient of a " Court " - judges. see article 6, sections 1 and 16, article 2, section 1, and Ca. Business and Professions Code section 6079.1.

II.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT HAS NO JUDGES

State bar rule of procedure rule 100, in effect when the Lebbos matter was filed in 1988, indicates that those who sit on this alleged " court " are non-lawyer or lawyer volunteers who claim to be " referees ", not judges. Judges of all

courts in California are appointed by the elected Governor, and then subject to the public vote. Article 6, section 16, Ca. Constitution. The State Bar Court's referees are chosen by the 23 member private board of the State Bar Association, except two non-lawyers chosen by the Governor. None are elected by the People of the state. section 6086.5, Rules of procedure 100.

Said State bar rule of procedure rule 100 provided as follows :

INTERNAL RULES OF THE STATE BAR

Rules of Procedure of the State Bar
Division II
The State Bar Court
Rule 100 State Bar Court

The State Bar Court consists of members of the State Bar and non-lawyers appointed by the Board of Governors, and two non-lawyers appointed by the Governor. The foregoing shall be

officers of the State Bar Court and shall be known as referees. From time to time, the Board of Governors may make additional appointments and may leave unfilled vacancies in such additional membership. The term of office of those persons appointed by the Board of Governors shall be terms as prescribed by the Board of Governors. "

It is difficult to conceive that another state would recognize such referees as if they were judges and assert recognition to their interim acts as if they were a real judge of a real court of law. see Norton v. Shelby County 118 U.S.425 (an unconstitutional court is void for all purposes; it has no judges, personnel, charges, records)

A referee is not a judge and may never claim to be one or have judicial title, function, or power. In re Anderson, 272 Md. 85, 321 A.

2d. 516 (1974) cert. denied, 421 U.S. 1000, 95 S. Ct. 1399, 44 L. Ed. 2d. 667 (1975). They are not chosen by the public selection process. Ca. Business and Professions Code section 6086.5 creating an alleged state bar court and Rule of Procedure of the state bar rule 100 et. seq. are void as there were no judges to this court, only unelected volunteers. Norton v. Shelby County 118 U.S. 425.

This result is not altered by the passage of Ca. Business and Professions Code section 6079.1 providing for the appointment of hearing judges to the alleged state bar court by the state supreme court in 1989. Both the state and United States Constitutions prohibit judges from appointing judges.

Appointing judges is ultra vires the judicial role of interpreting the law, Article 6, section 1, Ca. Constitution, fifth and fourteenth amendment to the United States Constitution.

III.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT IS NOT EMPOWERED TO FIND FACTS OR INTERPRET THE LAW

Since a " Court ", by definition, must be an entity that can " apply the laws to controversies brought before it, " Black's Law Dictionary," supra, but the state bar and its court are expressly prohibited from deciding or applying any law, Article 3, section 3.5 and article 6, section 9, Ca. Constitution, the state bar court is unconstitutional under both the state

and United States Constitutions as due process of law is violated by having an administrative board claim it can decide facts or law when it can not be empowered to find facts or interpret the law. Article 6, section 1, Ca. Constitution; Chronicle Publishing Co. v. v. Superior Court in and for the City of San Francisco (1960) 7 Cal. Rptr. 109, 354 P. 2d. 637.

Since Ca. Business and Professions Code sections 6079, 6079.1, 6086.5,6007,6884, 6125, 6126 (b) purport to allow 23 private persons to create an alleged state bar court to hear and determine the facts and the law of inactivity or disciplinary proceedings and take businesses, careers, and liberties

of lawyers, as authorized in Conway v. State bar, 47 Cal. 3d. 1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 (1989), this violates Article 3, section 3 of the Ca. Constitution and the due process of law clause of the fifth and fourteenth amendments to the United States Constition by the legislature purporting to invade the " application of the laws " function that is reserved under article 6, section 1, of the Ca. Constitution to the listed courts.

This transfers the Judicial power to hear and decide cases from article 6, section 1 of the Ca. Constitution to the legislature who transfers it to private, unelected opponents and competitors of lawyers.

Such a system is unconstitutional

as it denies to the attorney and all clients and members of the Public their ability to have their constitutional claims and bars heard by a competent court of law prior to any taking of the right to work and a vested license. see Gibson v. Berryhill, 411 U.S. 564 (1973).

The state bar court must be declared unconstitutional as it purports to decide law, when no one in this alleged " court" is empowered to decide any law. Article 3, section 3, Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d. 1311 (the invalidity is based not on a violation of the separation of powers, but on how that abolition of separation of powers denies a citizen the Due Process of Law).

This case is similar to People v. the Illinois Courts Commission, 69 Ill.2d.445, 14 Ill.Dec. 248 (1978).

In that case the state constitution was amended to create a Commission with the power to suspend judges. As appears to be true in the Lebbos' case, (1) the entity misconstrued and misapplied the known law with their own erroneous interpretation of the law. The entity countered by claiming the state constitution authorized them to enter the orders and provided for no judicial review for the judge. The Court held that,inasmuch

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(1) I am informed and believe that the charges indicate that in count one the alleged state bar court believes the conmingling prohibition applies to non-clients' funds, an error of law. In count two, the alleged state bar court believes (continued next page)

as the Commission was not part of the court system, it possessed no power to interpret statutory law or ambiguities or to compel judges to conform their conduct to the Commission's interpretation.

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(1) (continued from prior page)

that a filing of an order not made is done with no filing or court stamp of filing the paper, when it is a draft wedged into exhibits attached to exhibits in a brief, which is not a filing, another error of law. I am informed that count three concerning concealing assets at a deposition is based on the oral hearsay of an attorney embezzler now in state prison, who stole Lebbos' mail three months after the deposition. Count four is based on the misconstruction that an unapproved offer of settlement is a " stipulation." It is premised on an attorney being responsible if a clerk stamps a judge's signature for a client who wants to see the judge, when the attorney is nowhere around. I am informed that count four concerning false statements is an attempt to quash the speech, not of the attorney, but of a client.
(continued next page)

The court stated the following, at p.59:

" This court derives our authority and jurisdiction from sections 1 and 4 of the judicial article (Ill. Const. 1970, art. VI,sec. 1,4) Section 1 of article VI provides that all of the judicial power in this State is vested in a supreme, appellate and circuit court. Section 4 of article VI provides, inter alia that this court may exercise original judicial jurisdiction.

It is the function and duty of this court to act as the final arbiter of the Constitution."

The Commission took the same position as the alleged State Bar Court takes. It claimed that it can determine " conduct prejudicial to

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(1) (continued from prior page)

Count five concerns an attorney going to her assigned courtroom as required and the privilege of the public to attend all public proceedings in a courtroom. Count six is founded on an offensive personality statute as is count seven. Said statute is unconstitutional as it seeks to regulate First amend-
(continued next page)

the administration of justice," or " conduct that brings the judicial office into disrepute," even when the disciplinary rules are not in fact violated, or the interpretation of those rules is unconstitutional for invading First Amendment freedoms.

Amicus has taken judicial notice that the charges in the Lebbos' case, and the state bar court's position is that they can disbar based on their personal and subjec-

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(1) (continued from prior page)

ment activity. Count eight is founded on the same attempt to quash first amendment freedoms by claiming to prevent clients and an attorney from disqualifying judges for cause. Count nine is also found ed on the oral hearsay claims of an embezzler while the client testified that her attorney had her implied consent to file in Federal Court with her listed as a Plaintiff with others in Lebbos v. Judges, Santa Clara Superior Court, 883 F.2d.810 (1989).

tive interpretation of what protected speech, lawsuits, clients being represented hampers their idea of " the administration of justice," RB:3, when no one voted to allow the trade group to decide which clients could sue for what. They act in excess of their limited jurisdiction when they prosecute not for known acts of professional misconduct, but privileged acts and speech. Their subjective, political ideas of who can file suits, who is entitled to say what, where, when and how, who is entitled to be represented, and what privileged acts and speech are permitted by attorneys not only is unconstitutional under the first amendment, but is in excess of any subject matter jurisdiction they might

possess. 40 of the 45 charges clearly involved an invasion of Lebbos' Freedom of Speech or that of her clients. (2)

(2) In re: Snyder, 472 U.S.634, 105 S. Ct. 2874, 86 L. Ed. 2d. 504 (1985), held an attorney criticizing the administration of Justice in a court, does not warrant discipline. The Court did not reach the First Amendment issue, as they merely held that such criticism is " not inimical to the administration of justice." Pursuant to In re Justices of the Appellate Division, 33 N.Y.S. 2d. 441 (1973), an attorney is not subject to discipline for an out-of-court statement. Outside the courtroom the lawyer, may, as any other citizen, freely engage in the marketplace of ideas and say all sorts of things, including things that are disagreeable and obnoxious. Polk v.state bar of Texas 374 F. Supp. 784 (N.D. Tex.1974) (a reprimand for statements made by an attorney outside his professional capacity would violate his first amendment freedoms). Any rationale for any limitation on speech must be tailored to a compelling interest in the prevention of an impairment to the administration of Justice, and not because the speech is offensive, or wrong, or even tortious, (continued on next page)

The state bar court must be declared unconstitutional as it

(2) (continued from prior page)

or spiteful, or malicious, or vindictive. The nature, tone, content of the speech can not be judged, solely whether it impedes the actual administration of justice. Thus, In Re: Sawyer, 360 US 622, 3 L.Ed.2d. 1473, 79 S.Ct. 1376, remarks made to the press during a trial may tend to obstruct the administration of justice, whereas remarks made afterwards would not. Thus, it is only obstructive speech in pleadings or in court while in session or statements to the press in pending cases that may obstruct the administration of justice, as it may impair the ability of the judge or jury to assess and weigh, with detached neutrality, and based solely on the evidence presented in court, the merits of the matter. Sheppard v. Maxwell, 384 US 333, 16 L.Ed.2d 600, 86 S Ct.1507. There is no basis to assert any disciplinary offense when the statements or actions relate to past decisions, as there is no possible obstruction of justice once the case is completed. Re Pryor, 18 Kan 72. When an attorney directs a letter to a judge, stating the court has lost the confidence of the public, and suggesting the resignation of the judge, the attorney may not be

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does not comprehend either its own constitutional limitations or the

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disciplined. Re Austin, 5 Rawie (Pa) 191. An attorney in the course of legal proceedings may properly impute prejudice to a judge or court under circumstances that create a privilege. Re Sherwood, 259 Pa. 254, 103 A 42. In that case, an attorney who has removed a cause from a state to a federal court on the ground of local prejudice is privileged in stating to the federal court that the state judges are so prejudiced that his client cannot get a fair trial in the state courts. Criticism, not written or spoken in the capacity of an attorney, is not a ground for disciplinary action. Ex Parte Steinnman, 95 Pa. 220. In Polk v. State bar of Texas (ND Tex) 374 F. Supp 784, it was held that a reprimand for statements to the news media critical of actions of judge and district attorney would violate the attorney's First Amendment rights where such statements were made in response to the manner in which the attorney was treated as a citizen, and where the state bar had not shown that the attorney's conduct was probative of any inability to represent clients or that remarks would interfere with processes of administration of Justice.

limitations of the United States or state constitution on it never deciding any law or facts.

IV.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS THE PROSECUTORS AND THE JUDGES ARE APPOINTED WITHOUT ELECTION OR PUBLIC ACCOUNTABILITY BY THE SAME 23 PRIVATE PERSONS AND SERVE THE SAME POLITICAL ENDS

The state bar examiner is chosen to serve at the pleasure of the Chief Trial Counsel of the state bar. He performs such duties as the chief trial counsel shall direct. State Bar Rule of Procedure, rule 210.

Unlike a proper prosecutor, the prosecutor has no civil service rights. He is subject to the will of the Chief Trial Counsel, who is not elected by the People of the state. He is appointed by the same

23 person board that has created an alleged state bar court. Thus, since the same 23 persons choose both the prosecutors and the " judges," or " referees," there is no division of interest, no independence of the two separate functions, no required neutrality, or detachment, but a fusion of the prosecutorial and adjudicatory interests which establish this state bar court is unconstitutional as the judges and prosecutors, are, in fact, co-employees of the same 23 private persons and receive the same paycheck.

The Chief Trial Counsel is not subject to any public election and no public oversight. He can take bribes and make up charges at his own will. No one can disbar him and

no one can monitor his possible corruption. He is hired by the Board of the state bar association and serves at its unrestrained pleasure. This 23 member Board is not democratically elected. It does not represent the Public as the public is never permitted to remove these persons or vote on them, unlike state agencies where the people can remove the Governor if they do not like or approve of his appointments to boards or agencies, or where the People can remove the Attorney General or any District Attorney if they do not like their appointments either.

Here the 23 member board purports to create not only the judiciary at their own pleasure but also the prosecutor who presents

the cases. Ca. Business and Professions Code section 6010-6015, 6086.5, 6002, and state bar rules of procedure rule 100, et. seq.

Such a self-serving, self-interested system is almost identical to the system declared unconstitutional in McClure vs. Harris, 503 F. Sup. 409, 450, May 19, 1980 (Northern District Court of California), where the Administrative Board was involved in hiring the Hearing Officers. The Hearing Officers were trained by the Board. The training was voluntary. The training was non-professional. The Hearing Officers were formerly employed by the Board.

The Hearing Officers' compensation was fixed by the Board. A

Hearing Officer's compensation was dependent on whether he was hired on a case by case basis to hear cases. If he didn't rule for the Board, then he would not necessarily be used again as a hearing officer. In order for the case to come before a Hearing Officer, there already had to be a denial by the Board.

In the instant case, there was, of course, no such denial as there never was the required Probable Cause Proceeding for Lebbos. State Bar Rule of Procedure Rules 508, 509, 510, 511 were all violated in the Lebbos case in Bad Faith.

But the procedure envisions there would be such a denial by the issuance of a Notice, after Probable Cause was found to exist.

In McClure v. Harris, supra, the court stated the following :

" It is well-established in order to satisfy the fair hearing requirement of the Due Process Requirement, a Tribunal, whether Administrative or Judicial, must be impartial. This is violated when the Hearing Office's impartiality is compromised by being vicariously involved. Even if they have not participated personally in the hearing stage in any case in which they adjudicate, they are sufficiently vicariously involved when they are appointed by, and serve at the will of the carrier which not only participated in the prior stage of their case but has twice denied the claims which are the subject of the hearing. (emphasis added) Such hearing officers can only rule in the beneficiary's favor by directly overturning the Carrier's decision. They are further compromised by pecuniary interest (emphasis added) in currying the Carriers favor in that their income as hearing officers is entirely dependent on the Carriers' decisions regarding whether and how often, to call upon their services. When this is so, and there is other indicia of potential bias such as no mean-

ingful selection criteria (emphasis added) governing the appointment of hearing officers, when the occasional training sessions are presented by the Carrier, attendance at which is voluntary, and the Hearing officers receive their only training from the Board they are called upon to review, (emphasis added) then, while each of these factors by themselves, might not deny the Constitutional requirement of impartiality, their combined fact is constitutionally impermissible"

The State Bar Rules of Procedure envisage that the state bar prosecutors and judges are all trained informally together. The training comes solely from the state bar prosecutors. It is voluntary, non-professional. It is arranged by the same board that employs both the paid referees or judges and the prosecutors.

State Bar rule of procedure rule

111 provides that the executive committee of the alleged "State Bar Court" (2) may provide formal programs for the information and training of newly appointed referees and cause to be prepared and distributed information as to State Bar procedures for members of the legal profession or of the public, or both."

This state bar court consisted, at the time of the Lebbos proceeding, " of members of the state bar and non-lawyers appointed by the Board of Governors, and two non-lawyers appointed by the Governor. The foregoing shall be officers of the State Bar Court and shall be known as referees. From time to time the Board of Governors may make additional appointments and

may leave unfilled vacancies in such additional membership. The terms of office of those persons appointed by the Board of Governors shall be terms as prescribed by the Board of Governors, but such persons shall serve at the pleasure of the Board of Governors." State bar rule of procedure, rule 100, " The state bar court."

In sum, this alleged court is so unstable and fluid that 23 private persons can change its composition at will, with no reason, and with no definite cause or excuse. When it claims to have non-lawyers sit as judges, that means an alleged court with persons who are not " Court Officers " may be peopled with non-Court persons making decisions about the legal profession.

The state bar court is unconstitutional as it is without any proper judges or officers.

That rule now provides that " the state bar court is the court created pursuant to section 6086.5 of the Business and Professions Code, consisting of judges and judges pro tempore." However, section 6086.5 is void and unconstitutional and creates no state bar court. We, the voters create our own courts. We, the Voters, elect and remove our own judges to our own courts. We, the Voters, never voted to create a state bar court. We, the Voters, never voted to have any judges to this court. We, the voters, can not elect and remove these alleged judges as required by our state Constitution.

We, the voters never authorized the state supreme court to remove our right to vote to elect judges. Their claiming to appoint judges is unconstitutional and outside the scope of their judicial duties as well as the unlawful delegation of the public power to choose judges to them, sitting not in their official duties, but as private citizens. Article 6, sections 1, 9, and 16; article 2, section 8; article 4, section 1 and 16 (B), Ca. Constitution; Amendments 5 and 14 of the US Constitution.

Further, in claiming to have judges pro tempore, the instability and lack of public accountability is even more apparent as the new rules provide for unappointed judges as well.

Since only the state bar prosecutors have any input into selection of any judges through their voice with their employer, the Board, the nine alleged judges appointed hy the state supreme court include those formerly employed as prosecutors or employees of the state bar or those loyal to the state bar's political agenda. Ca. Business and Professions Code section 6079.1

This transfers the state bar's political ideology into its role in discipline. It taints and bars its ability to perform the latter assigned role with the required neutral detachment required of a proper entity. In re Murchison (1955) 349 U.S.133, 75 S.Ct.626, 99 L.Ed. 942.

With the public unable to elect or remove these judges as required by article 6, section 16 of the California Constitution, a self-perpetuating system of political prosecutions is engrained and ensured with no fair hearings or tribunals.

As in McClure, supra, there is no meaningful selection criteria for the hearing officers. The prosecutor chooses whomever he wants. He tells the presiding referee of the alleged state bar court. The presiding referee then appoints the person the prosecutor wants. State bar rule 113 (d). An unconstitutional state statute even allows the required three man panels to be abolished at the will and whim of the presiding referee. Ca.

Business and Professions Code section 6079. (3)

In sum, the state bar court appears to be unconstitutional as the prosecutors and the judges are co-employees. They are paid from the same paycheck financed with private and compelled funds. The training is from the same board that files the charges. It is voluntary and by the same board. It is informal. Both prosecutors and judges are housed together in the same State Bar building. There is no meaningful selection criteria of hearing officers. The alleged judges have to overrule their own principal's agent in order to find

(3) I am informed and believe this abolition of the three person panel was done in the Lebbos case with the appointment of a solo volunteer who was 83.

for the attorney. With no separation of the prosecutorial and adjudicative functions in reality, but those units having the same ideological and political and personal paycheck and loyalties to a system of trade group compulsions, McClure, supra, appears to dictate a ruling the state bar court is unconstitutional.

Previous decisions upholding the constitutionality of the state bar act when the referees were private attorneys and not paid employees of the prosecutor's employer and which had three person panels are not applicable as now we are dealing with an alleged state bar court which directly employs both the prosecutors and the single judges and which is claimed under the

Conway, supra case to possess the judicial power to take careers, businesses, and the liberties of lawyers in the state.

V.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT HAS EXEMPTED ITSELF FROM ALL STATE LAW

The concept of Due Process of law is that there is regularity of both procedure and of substance in the workings of any " Court." All of the courts in the state are governed by both state law, the state constitution, and the United States Constitution. Article 6, section 1, Ca. Constitution.

The alleged state bar court is unconstitutional as it has, by statute, exempted itself from all state law, thereby denying attorneys the equal protection of state

law. Skinner v. Oklahoma, 317 U.S. 535, 540, 62 S. Ct.1110 (1942). Refer to Ca. Business and Professions Code section 6000. " No law of this state restricting or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof... shall be applicable to the State Bar, unless the legislature so declares." (4)

Judicial notice of the rules of the alleged state bar court indicate it has abolished the need for

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(4) Any argument the alleged state bar court is not judicial is refuted by the fact that in the Lebbos ' case, a non-lawyer volunteer claims to have ex parte, without notice or hearing, enrolled the attorney as an inactive member of the state bar, which membership is however constitutionally automatic and not discretionary with the state bar under Article 6, section 9 of the Ca. Constitution.

notice, a hearing, grounds, competent evidence, cross-examination, confrontation, admitting court action, review of constitutional and legal or evidentiary bars, and allows any volunteer to take the right to work of any lawyer ex parte without notice or hearing and have the attorney imprisoned the next day. see State Bar rules of procedure, rules 100, 789-799, Conway v. State Bar, supra.

VI.

THE STATE BAR COURT IS UNCONSTITUTIONAL AS IT HAS NO SUBJECT MATTER JURISDICTION

It appears that the alleged state bar court is unconstitutional as it has no subject matter jurisdiction. Ca. Business and Professions Code section 6086.5 purports to give this alleged court unlimi-

ted subject matter jurisdiction when read with the state bar's claim that its jurisdiction is the " administration of justice." Keller, supra.

The provisions of the Business and Professions Code give no limitation on their claims to subject matter jurisdiction, which is required of all courts of law. This is the same as saying the alleged state bar court has jurisdiction over all other courts of law, all law, and all persons in the state, including all speech, conduct, activities, be it private, personal, or otherwise.

For example, Ca. Business and Professions Code section 6068 (f), which Amicus understands involves 40 of the 45 charges against At-

torney Betsey Warren Lebbos, all of which Amicus understands were brought by the losing federal court defendant attorneys in Lebbos v. Judges, Santa Clara Superior Court, 883 F.2d. 810 (Ninth) (1989), and other opposing counsel in other on-going suits, states that is the duty of any attorney to " abstain from all offensive personality." One person's " Offensive personality" is another persons's " Justice." The statute is unconstitutional, both on its face, and as applied for vagueness and over-breadth. It can not be the basis of disciplinary charges by an alleged state bar court, as the attorney is denied " fair notice." see State Board of Dentistry v. Blumer, 261 N.W. 2d.186 (1978). Refer to ft.2.

In the article, " Attorney Discipline for " Offensive Personality in California," 31 Hastings L.J. 1097 (1980), its author points out the offensive personality is unconstitutional on its face.

In sum, the lack of finite subject matter jurisdiction with no fair notice and subjective interpretations of political issues voids the state bar court's existence for failure to provide substantive due process of law. See Brandenburg v.Ohio, 395 U.S. 444, 89 S. Ct. 1827, 23 L.Ed. 2d 430. Near v. Minnesota, 283 U.S. 697.

CONCLUSION

This court should take judicial notice there are no mental, legal, or physical competency standards for any of the persons who sit in

the alleged state bar court. Ca. Business and Professions Code sections 6079, 6079.1, state bar rule of procedure, rule 100.

Amicus requests that this court hear the Petition and declare the state bar court void since it has no practical elements required of a Court of Law. As stated in North Pacific S.S.Co. v. Industrial Accident Commission, D.C., Cal. 23 F.2d.109," Proceedings in a tribunal without jurisdiction are void, and an aggrieved party need not seek review, but at any stage, may treat them as null and defend against trespass by their use."

RESPECTFULLY SUBMITTED,

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VERIFICATION

I have read and prepared the foregoing Amicus Curiae Brief for Petitioner and Motion and declare under penalty of perjury that it's contents are true and correct, based on my own personal knowledge, information, and belief, and this Verification is executed this 19th day of November, 1990 at San Jose, California.

RESPECTFULLY SUBMITTED,

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